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Art Unit : 3643

Docket No. 19012.00

**REMARKS**

By the present amendment, Applicant has amended Claims 1, 3, 5, 6, 8, 10, and 12-14, and cancelled Claims 2, 4, 9, 11, and 16. Claims 1, 3, 5-8, 10, 12-15, and 17-19 remain pending in the present application. Claims 1, 8, and 14 are independent claims.

In the recent Office Action the Examiner objected to the drawings under 37 CFR 1.83(a) as not showing all claimed features. It is respectfully submitted that Figure 3 shows the net secured to only one pair of sides. This feature is also discussed at page 16, lines 20-26 of the specification. Applicant respectfully submits that the drawings meet the specific requirements of 37 CFR 1.83(a).

In the recent Office Action the Examiner rejected Claims 1-3, 5, 14, 15, and 17 under 35 U.S.C. § 102(b) as being anticipated by Holyoak. Claims 4, 6, 7-13, 16, 18, and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Holyoak either alone or in view of Nelson et al. These rejections are respectfully traversed with respect to the newly-submitted claims.

The instant invention is a fishing net having a rectangular frame and floatation material secured over each side of the frame. The independent claims have been amended to reflect these features. Specifically, Claim 1 has been amended to include the features of original Claims 2 and 4; Claim 8 includes the limitations of Claims 9 and 11; and Claim 14 includes the recitation of Claim 16.

Claim 1 has also been amended to recite that the net is substantially planar with the frame. Claim 14 now requires that the net is wrapped around portions of the frame. An original limitation of Claim 8 requires that the tether is secured to the frame. Claim 8 has been amended to state that an opposite end of the tether can be attached to a user. Basis for these amendments to the claims is provided by showings in the original figures. These features define over the applied prior art.

It is respectfully submitted that the applied prior art neither anticipates nor renders obvious the instant invention, as defined by the newly-amended claims.

The patent to Holyoak teaches turtle trap having a rectangular frame. The tubing which forms the frame can float. There is no separate flotation device, i.e. the float is the frame. The elements identified by the Examiner in the last line of page 2 of the recent Office Action are a walkway and a ramp for turtles.

The Examiner then combines the turtle trap of Holyoak with the fish container of Nelson to show that it would have been obvious to put foam on the frame of Holyoak. It is respectfully submitted that the Examiner cannot pick and choose individual features of the references to meet the claimed invention. The only guidance to make such a combination is provided by Applicant's own disclosure, which cannot appropriately be used as a blueprint to meet the instant claim. See Uniroyal Inc. v. Rudkin-Wiley Corp., 5 USPQ 2d 1434 (Fed. Cir. 1988). It is impermissible hindsight to use the

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claim as a frame and the prior art references as a mosaic to piece together a facsimile of the invention. W.L. Gore & Associates v. Garlock, Inc., 220 USPQ 303, 312 (Fed. Cir. 1983). cert. denied, 469 U.S. 851 (1984).

Other claimed features emphasize the differences between the instant invention and the prior art. For example, the recitation in amended Claim 1 that the net material is in substantially the same plane as the frame highlights the difference between the instant invention and the relatively deep turtle trap of Holyoak. Holyoak must be deep and the net can not be in substantially the same plane as the frame because it captures turtles and they must fall into and be trapped by a relatively deep net.

The tether, as recited in independent Claim 8 and dependent Claims 7 and 19 is secured to the frame. In addition to the fact that it is impermissible hindsight to modify Holyoak with the rope of Nelson, it would render the invention inoperable. The rope of Nelson is attached the net. When the invention of the Nelson patent is placed in the water, the rope is below the water line. This location is acceptable for a rope attached to an anchor, as in Nelson. However, the location below the water would not be acceptable in the instant invention for a tether that would be attached to someone using it. The instant invention would tip over if the tether were attached below the water.

Independent Claim 14 has been amended to require that the net is wrapped around the sides of the frame. This feature defines

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over Holyoak. Holyoak uses ties to attach the net to the frame and there would be no reason to modify Holyoak.

Finally, dependent Claims 6, 13, and 18 state that the net is only connected to two sides of the frame. Although the Examiner finds this feature to be obvious, it is noted that Holyoak shows the net tied to all four sides and gives no indication that it might be desirable to attach the net to only two sides. In fact, it is unlikely that the net of a trap would be have areas not attached to the frame. It is seen that the Examiner has engaged in impermissible hindsight and the only suggestion to make the modification was provided by Applicant's own disclosure.

For at least the above reasons, Applicant submits that the instant claims are allowable. Applicant further submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,



Richard C. Litman  
Registration No. 30,868  
(703) 486-1000

RCL:ckf

LITMAN LAW  
OFFICES, LTD.  
P.O. BOX 15035  
ARLINGTON, VA 22215  
(703) 486-1000

## **APPENDIX**

LITMAN LAW  
OFFICES, LTD.  
P.O. BOX 15035  
ARLINGTON, VA 22215  
(703) 486-1000

Annotated Claims

- 1     1. A multipurpose fishing net, comprising:
  - 2         a rigid frame, wherein said frame is rectangular with a first
  - 3         pair of sides comprising opposed first and second sides and a
  - 4         second pair of sides comprising opposed third and fourth sides;
  - 5         a flotation device affixed to said frame, wherein said
  - 6         flotation device having first through fourth sections of cylindri-
  - 7         cal closed cell foam material respectively secured over said first
  - 8         through fourth sides of said frame; and
  - 9         a single ply of flexible net material extending loosely across
  - 10        said frame and defining a shallow net pocket, such that said net
  - 11        material is in substantially the same plane as said frame.
- 1     3. The multipurpose fishing net according to claim [2] 1,  
2        wherein: said frame is formed of first through fourth lengths of  
3        hollow tubular material; and  
4        said lengths are joined to one another by four ninety degree  
5        elbows.
- 1     5. The multipurpose fishing net according to claim [2] 1, wherein  
2        said net material is secured to each of said first through fourth  
3        sides of said frame.

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1       6. The multipurpose fishing net according to claim [2] 1, wherein  
2       said net material is secured to only one said pair of sides of said  
3       frame.

1       8. A multipurpose fishing net, comprising:  
2                a rigid frame, wherein said frame is rectangular with a first  
3                pair of sections comprising opposed first and second sides and a  
4                second pair of sections comprising opposed third and fourth sides;  
5                a flotation device affixed to said frame, wherein said  
6                flotation device including first through fourth sections of  
7                cylindrical closed cell foam material respectively secured over  
8                said first through fourth sides of said frame;  
9                a single ply of flexible net material extending loosely across  
10          said frame and defining a shallow net pocket; and  
11               a flexible tether [means] having one end secured to and  
12          extending from said frame for tethering the multipurpose fishing  
13          net and an opposite end for attachment to a user.

1       10. The multipurpose fishing net according to claim [9] 8,  
2       wherein: said frame is formed of first through fourth lengths of  
3       hollow tubular material; and  
4                said lengths are joined to one another by four ninety degree  
5       elbows.

1       12. The multipurpose fishing net according to claim [9] 8, wherein  
2       said net material is secured to each of said first through fourth  
3       sides of said frame.

1       13. The multipurpose fishing net according to claim [9] 8, wherein  
2       said net material is secured to only one said pair of sides of said  
3       frame.

1       14. A multipurpose fishing net, comprising:  
2              a rigid rectangular frame, having a first pair of sides  
3       comprising opposed first and second sides and a second pair of  
4       sides comprising opposed third and fourth sides;  
5              a flotation device affixed to said frame, wherein said  
6       flotation device includes first through fourth sections of cylin-  
7       drical closed cell foam material respectively secured over said  
8       first through fourth sides of said frame; and  
9              a single ply of flexible net material extending loosely across  
10      said frame and defining a shallow net pocket, wherein said net  
11      material is wrapped around two or more sides of said frame.